REMARKS

Claims 1-23 are pending in the present application. Reconsideration is respectfully requested for the following reasons.

As an initial matter, Applicant notes with appreciation that the four pages of form PTO-1449 of the IDS submitted with the application have been initialed and returned by the Examiner. However, Applicant notes that the "other document" on page 1 of the form PTO-1449 was not initialed by the Examiner. Applicant respectfully requests the Examiner to initial the other document as set forth in form PTO-1449 and to send a copy of the initialed form PTO-1449 along with the next Office Action.

As explained below, the Examiner has imposed a four-way restriction requirement on the claims. Those claims included 19 total claims and 5 independent claims. Specifically, the Examiner has restricted the claims as follows:

Group I - claims 1-8, drawn to a bumper system,

Group II - claims 9-13, drawn to a bumper system;

Group III - claims 14-18, drawn to a bumper system; and

Group IV – claim 19, drawn to a bumper system.

Applicant provisionally elects Group I of the claims, with traverse.

According to the Office Action mailed April 19, the claims of Groups I-IV are related as combination-subcombination.

M.P.E.P. § 806.05 states:

> Where two or more related inventions are being claimed, the principal question to be determined in connection with a requirement to restrict a rejection on the ground of double patenting is whether or not the inventions as claimed are distinct. If they are distinct, restriction may be proper. If they are not distinct, restriction is never proper.

MPEP § 806.05(a) states:

> A combination is an organization of which a subcombination or element is a part.

Thus, a combination claim may, for example, include elements A, B, and C, whereas the subcombination by definition could only include A and B, A and C, or B and C. The subcombination clearly could not include all the elements of the combination. Based on the above legal standards, Applicant submits that the restriction requirements made in the Office Action is not proper for the reasons stated below.

Regarding the restriction for the inventions as being related as combination and subcombination, the Examiner has stated that the inventions of Groups I-IV are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has unity by itself or in other combinations and cites M.P.E.P. §806.05(c). Applicant notes that the Examiner has identified Group I as the combination and Groups II, III and IV as the subcombination. As set forth above, a combination is an organization of which a subcombination or element is a part. Accordingly, as set forth in the Office Action, Groups II, III and IV are part of the combination of Group I. However, neither Group II, III nor Group IV are subcombinations or elements that are part of Group I. Furthermore, all groups define a combination of a beam, an energy absorber and mounts. Therefore, all the independent claims of Groups I, II, III and IV define a combination such that the restriction as set forth in the Office Action is improper. Finally, new claims 20-23 further define the energy absorber (claims 20-22) and the beam and mounts (claim 23) in the same manner that claims 9, 13, 14 and 19 further define the combination of the beam, energy absorber and the mounts. Claims 20-23 illustrate that any combination and subcombination restriction is improper. Therefore, Applicant submits that all of claims 1-23 should be examined and the restriction requirements should be withdrawn.

The Office Action has also stated that the application includes claims drawn to species A illustrated in Figs. 1-5, species B illustrated in Figs. 6-8, species C illustrated in Fig. 9, species D illustrated in Fig. 9A and species E illustrated in Figs. 10 and 11. The Examiner has stated that Applicant must select one of these species for prosecution.

Applicant provisionally elects the first species as disclosed in Figs. 1-5 for prosecution, with traverse. All pending claims 1-23 are believed to read on the species disclosed in Figs. 1-5. Accordingly, Applicant submits that all the claims should be examined.

Applicant respectfully submits that claims 1-23 should be examined and allowed, and a notice to this effect is earnestly solicited.

Respectfully submitted,

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5/17/04
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